

California Real Estate Withholding

	Escrows Closing On or Before December 31, 2002	Escrows Closing On or After January 1, 2003
Sellers Subject to Withholding	<ul style="list-style-type: none"> • <u>Individuals</u> with a last known street address outside of California (nonresidents) and • <u>Non-individuals</u> (corporations, estates, trusts, etc.) with a last known street address outside of California 	The new law expands real estate withholding to include all individuals (residents and nonresidents). It continues to apply to non-individuals with a last known street address outside California.
Rate	The withholding rate is 3½ percent of the total sales price.	No change.
Threshold	There is a withholding requirement only if the total sales price exceeds \$100,000.	No change.
Certifiable Exceptions – Individuals	<p>There is no withholding requirement if an <u>individual</u> seller is:</p> <ul style="list-style-type: none"> • A resident of California or • Selling a principal residence. 	<p>Individuals will no longer have an exemption for being a resident. However, individuals can be exempt from withholding if they certify that they are:</p> <ul style="list-style-type: none"> • Selling the property for \$100,000 or less, • Selling their principal residence, • Selling the property at a loss for California income tax purposes, • Selling the property as part of an Internal Revenue Code Section 1031 exchange, or • Selling the property because of an involuntary conversion and will replace the property within the provisions of Internal Revenue Code Section 1033.
Certifiable Exceptions – Non-individuals	<p>There is no withholding requirement if a <u>non-individual</u> seller is:</p> <ul style="list-style-type: none"> • A corporation with a permanent place of business in California, • A partnership or LLC, • A tax exempt entity, insurance company, IRA, or qualified pension plan, • An irrevocable trust with CA trustee, • An estate with CA decedent, or • A bank or bank acting as fiduciary for a trust. 	No change.

	Escrows Closing On or <u>Before</u> Dec. 31, 2002	Escrows Closing On or <u>After</u> January 1, 2003
Waivers & Reduced Withholding – Individuals	Individuals can request a waiver or reduced amount of withholding when there is little or no gain on the sale or the estimated California income tax is significantly less than the statutory withholding amount.	There is no waiver process for individuals. The full amount of withholding is required unless the sellers can certify that they meet one of the exceptions or the buyer agrees to withhold on each payment of an installment sale.
Waivers & Reduced Withholding – Non-individuals	Non-individuals can request a waiver or reduced amount of withholding when there is little or no gain on the sale or the estimated California income tax is significantly less than the statutory withholding amount.	No change.
Multiple Sellers	If there are multiple sellers only some of which are nonresident individuals or non-individuals, you must withhold on the total sales price even though the nonresidents only own a portion of the property. However, the nonresident individual or non-individual may request a reduced withholding amount.	<ul style="list-style-type: none"> • For <u>individual</u> sellers, withhold according to the seller's interest in the property. • For <u>non-individual</u> sellers, there is no change.
Loss on Sale – Individuals	Individuals can request a waiver if the sale will result in a loss.	There is no withholding on individual sellers if they can certify that the sale will result in a loss. The law no longer allows individuals to request a withholding waiver.
Loss on Sale – Non-individuals	Non-individuals can request a waiver if the sale will result in a loss.	No change.
Small Gain – Individuals	Individuals can request a waiver or reduced amount of withholding if the gain on the sale will result in significantly less California income tax than the statutory withholding amount.	Full withholding is required unless the individual has a loss on the sale for California income tax purposes. The Franchise Tax Board cannot allow reduced withholding for individual sellers.
Small Gain – Non-individuals	Non-individuals can request a waiver or reduced amount of withholding if the gain on the sale will result in significantly less California income tax than the statutory withholding amount.	No change.

	Escrows Closing On or <u>Before</u> Dec. 31, 2002	Escrows Closing On or <u>After</u> January 1, 2003
Exchanges	If the sale is part of an Internal Revenue Code Section 1031 exchange, the seller may request a waiver of withholding from the Franchise Tax Board. Any boot (cash or cash equivalent) received by the seller is subject to withholding.	<ul style="list-style-type: none"> • <u>Individuals</u> can certify that the sale is part of an Internal Revenue Code Section 1031 exchange and <ol style="list-style-type: none"> 1. If it is a simultaneous exchange, only the proceeds (boot) going to the seller will be withheld upon in escrow, or 2. If it is a deferred exchange, the proceeds will go to an intermediary who will withhold, if necessary. • <u>Non-individuals</u> must still request a waiver from FTB to eliminate or reduce withholding in escrow.
Due Dates	Withholding is due to the Franchise Tax Board by the 20 th day of the month following the month escrow closes.	No change.
Forms	<ul style="list-style-type: none"> • Form 597, Nonresident Withholding Tax Statement for Real Estate Sales • Form 597-E, Nonresident Withholding Exchange Affidavit • Form 597-I, Nonresident Withholding Installment Sale Agreement • Form 597-W, Withholding Exemption Certificate and Nonresident Waiver Request for Real Estate Sales 	<ul style="list-style-type: none"> • Form 597, Real Estate Withholding Tax Statement (Used to report withholding on all individuals and non-individuals.) • Form 593-C, Real Estate Withholding Exemption Certificate for Individual Sellers (Used by individual sellers when they can certify that they meet one of the exceptions.) • Form 593-I, Real Estate Withholding Installment Sale Agreement (Used by buyers when the seller is an individual and the buyer wants to withhold on each payment instead of withholding the full amount at the time of sale.) • Form 593-L, Real Estate Withholding – Computation of Gain or Loss (Used by individual sellers to compute the gain or loss on the sale.) • Form 593-W, Real Estate Withholding Exemption Certificate and Waiver Request for Non-individual Sellers (Used by non-individual sellers to certify that they meet one of the exceptions or to request a waiver or reduced amount of withholding when there will be little or no gain.) <p>Note: <u>Only</u> the 2002 revision of Form 597 and new Forms 593-C, 593-L, 593-I and 593-W can be used for sales closing on or after January 1, 2003. Forms 597-E, 597-I, and 597-W may not be used.</p>